

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JUNEAL PRATT,

Plaintiff,

v.

**MARK LUKIN,
MARILYN LEUENBERGER, and
PAUL RODRIGUEZ,**

Defendants.

CASE NO. 8:09CV197

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Report and Recommendation of Magistrate Judge F.A. Gossett (Filing No. 6) that this case be dismissed pursuant to 28 U.S.C. § 1915A, and on the Plaintiff's Motion for Leave to File an Amended Complaint (Filing No. 7). Defendants have not yet been served. Plaintiff Juneal Pratt ("Pratt") did not file any Statement of Objections to the Magistrate Judge's Report and Recommendation, but moved to amend his Complaint to correct the deficiencies noted in the Report and Recommendation.

DISCUSSION

In his Report and Recommendation (Filing No. 6), Magistrate Judge Gossett recognized that when a claim is silent as to a defendant's capacity, the court presumes the complaint to include only official-capacity claims. See *Baker v. Chisom*, 501 F.3d 920, 923 (8th Cir. 2007) *cert. denied* 128 S. Ct. 2932 (2008). Magistrate Judge Gossett also noted that the Eleventh Amendment bars claims for damages against state officials in their official capacities. Pratt's Complaint did not specify the capacity in which he sued the Defendants, and made claims for damages only. Thus, Judge Gossett recommended that the Complaint be dismissed.

In response to Judge Gossett's Report and Recommendation, Pratt moved for leave to amend his Complaint to include claims against the Defendants in their personal capacities, and attached a Proposed Amended Complaint (Filing No. 7-1) asserting such claims. The Court will grant Pratt's Motion to Amend, and will allow Pratt to file the Amended Complaint. The Report and Recommendation is therefore moot.

IT IS ORDERED:

1. The Plaintiff Juneal Pratt's Motion for Leave to File an Amended Complaint (Filing No. 7) is granted;
2. The Plaintiff Juneal Pratt shall immediately file, in a separate docket entry, the Amended Complaint that now appears at Filing No. 7-1;
3. The Report and Recommendation (Filing No. 6) is denied as moot; and
4. The Amended Complaint will be subject to review prior to service pursuant to 28 U.S.C. § 1915A, which review the Court respectfully requests be conducted again by the Magistrate Judge on Report and Recommendation.

DATED this 16th day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge